

SERVED: December 22, 2004

NTSB Order No. EA-5130

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 21st day of December, 2004

_____)	
MARION C. BLAKEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-16452
v.)	
)	
GARY MICHAEL WEDDING,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

This case began as an emergency revocation proceeding brought by the FAA against mechanic Gary Wedding who, as pertinent here, was responsible for the installation of a Global Positioning System (GPS) in a Beechcraft model V-35B aircraft owned by another. The FAA charged that Wedding had violated Sections 43.12 (a) (1) and (a) (3) of the Federal Aviation Regulations (FARs) by falsifying FAA documents approving the

installation of that device. We assigned the case to an Administrative Law Judge for an oral hearing.

In a nutshell, Wedding testified that he had faxed an FAA Form 337 requesting approval for the installation to the FAA, and that the form was faxed back to him granting approval. Although Wedding did admit that he had cut off the bottom of the document and pasted the bottom half of a blank 337 form to it, he denied that he had otherwise altered the document or fabricated the signature block showing the approval of FAA Inspector Renato Lutz. He also testified that, when he received the return fax from the FAA, the signature block containing Lutz' name was in the condition that it appears in the official record in this case. That signature block clearly has been cut and pasted to the document, and the signature itself is elongated vis-à-vis other signatures of Inspector Lutz.

Lutz testified that he did not recall approving the installation of the GPS, that he had not altered or cut and pasted his signature block on the Form 337, and that his practice would be to give instructions in block 8 of that form when returning it to the applicant to permit proper completion of the installation, but that no such instructions appear on the form. Finally, he denied giving field approval for the installation, which was necessary to return the aircraft to service.

The FAA also produced William J. Flynn, a forensic documents examiner recognized as an expert in that field. Flynn testified

that his examination of the Form 337 in question revealed that it had never been faxed. He noted that the form, at least the top half of it that was not altered by Wedding, was larger than the original Form 337, but that the type of fax machines that were being used here by both Wedding and the FAA would shrink the document slightly each time it was faxed in order to permit the addition of a fax header at the top of each page. He noted that, because this document was purportedly faxed twice (according to respondent Wedding), it should have had two headers, and it should have been shrunk twice, but that neither of these indications of faxing is present. Moreover, he pointed out that the document lacks stairstepping, a technical flaw that is usually apparent in faxed documents. Wedding himself did not explain in his testimony why these indicia of faxing were not present, nor did he present any expert witness to attempt to render an explanation.

The law judge found that the FAA had not proven its case, and that it was impossible to determine whether respondent or Inspector Lutz had altered the document. We reversed, finding that there was ample evidence to indicate that respondent had indeed altered the document.¹

This case returns to us now on remand from the United States Court of Appeals for the Ninth Circuit. The court cited our

¹ Administrator v. Wedding, NTSB Order No. EA-4994 (2002).

precedent on the level of deference that is owed to a law judge's credibility determination and concluded that,

The Board did not apply this deferential standard of review to the ALJ's adverse credibility determination regarding Inspector Lutz. To reverse the ALJ's determination, the Board would have to find that the "great weight of the evidence" established that Wedding, not Lutz, falsified the Form 337. It is not possible from this record to say that the great weight of the evidence points to either man, as it is at best inconclusive. Because the Board abused its discretion in overturning the ALJ's credibility finding, we grant the petition for review, reverse the Board's decision, and remand the case for further proceedings consistent with this opinion.²

There seems to be little doubt that someone falsified official FAA documents in this case. Although in our decision we had no difficulty determining who had done so, the court found that it is impossible to determine on this record whether Inspector Lutz or respondent made those alterations. In light of its holding, and the lack of any argument from the FAA that further proceedings would produce any different result, we see no alternative but to set aside the Administrator's order.

ACCORDINGLY, IT IS ORDERED THAT:

The Administrator's order is dismissed.

ENGLEMAN CONNERS, Chairman, ROSENKER, Vice Chairman, and CARMODY, HEALING, and HERSMAN, Members of the Board, concurred in the above opinion and order.

² Wedding v. NTSB, 96 Fed. Appx. 527, 2004 WL 958048 (9th Cir. 2004).